IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1667 of 2001 (S/S)
(Old No. 15724 of 1993 Group-A)

Prakash Chandra
S/o Soran Lal
R/o Village Indergari
Post Addyamik Nagar
District Ghaziabad. …….Petitioner

Versus

1. The inspector General of Police
   Meerut Zone, Meerut.
2. The Deputy Inspector General
   of Police, Garhwal Division
   Pauri.
3. The Superintendent of Police
   Chamoli ……..Respondents

Shri B.S. Parihar, learned counsel for Petitioner.
Shri Paresh Tripathi, learned Standing Counsel for the respondents.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 27.07.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of certiorari, quashing the order dated 06.04.1993 (Annexure-1), passed by Superintendent of Police, Chamoli, whereby the petitioner has been reverted form the post of Head Constable to the post of Constable.

2. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit filed by the parties.

3. Brief facts of the case, as narrated in the writ petition are that petitioner was initially appointed as Constable with the U.P. Police. It is alleged that he worked sincerely and honestly and in an encounter, succeeded in killing one of the notorious dacoits in district Muzaffarnagar. Under Regulation 455 of U.P. Police Regulations, the police authorities, has power to promote specially deserving Constables to the rank of Head Constable to the extent of 20% of the total number of posts of Head Constables in the district. In view of the meritorious service of the petitioner, he was promoted under said Regulation vide order dated 25.6.1990 (Annexure-2) passed by Superintendent of Police, Muzaffarnagar. The petitioner joined his duties as Head Constable at Muzaffarnagar and later on transferred to district Chamoli. However, vide order dated 06.04.1993 (Annexure-1) Superintendent of Police, Chamoli (respondent No. 3), reverted the petitioner from the post of Head Constable to the post of Constable on the ground that the promotion was made without prior approval of Deputy Inspector General (Personnel) U.P. Allahabad and beyond the strength of 20% of the Head Constables in the district. The said order has been challenged by the petitioner on the ground that his promotion was not beyond permissible strength for promotion under Regulation 455 of U.P. Police Regulation. The impugned order is also challenged on the ground

that approval of Deputy Inspector General of Police (Administration/Personnel) is required only when the promotion is made beyond the strength permissible under Regulation 455 above. Challenging the impugned order, as violative of Article 311 (2) of Constitution of India. This petition was filed before the Allahabad High Court in the year 1993 from where it has been received by transfer under Section 35 of U.P. Reorganization Act, 2000.

4. A counter affidavit has been filed on behalf of the respondents in which it has been admitted that the petitioner was promoted vide order dated 25.06.1990 (Annexure –2 to the writ petition) on the post of Head Constable under Regulation 455 of U.P. Police Regulation by the Superintendent of Police, Muzaffarnagar. However, it is stated in the counter affidavit that since said promotion was without approval from the Deputy Inspector General (Personnel) and in excess of the permissible percentage of strength of Head Constables, the impugned reversion order (Annexure-1) was rightly passed by the authority concerned. It is further stated in the counter affidavit that the impugned order is not punitive in nature nor violative of Article 311 (2) of the Constitution of India. It is further stated that petitioner has earned minor punishments during his service career.

5. Learned counsel for the petitioner, drew attention of this Court to Regulation 455 of U.P. Police Regulations, which reads as under:-

"455. *Specially deserving constables of Civil Police who are unable to qualify for promotion in the manner specified in Paragraph 454, may be promoted to the rank of Head Constable With approval of the Range Deputy Inspector-General of Police, provided that the total number of Head Constables so promoted in the district shall at any one time not exceed 20 percent of the total number of Head Constables, Civil Police, sanctioned in the district for Watch and Ward Duty.*

Specially deserving constables, Civil Police of the Criminal Investigation Department who are unable to qualify for promotion in the manner specified in Paragraph 454, may be promoted to the rank of Head Constables by the Deputy Inspector-General of Police, Criminal Investigation Department, provided that the total number of Head Constables so promoted in the Criminal Investigation Department shall not exceed 50 per cent of the Head Constables, Civil Investigation Department.

Specially deserving constables of the Armed Police who are unable to qualify for promotion in the manner specified in Paragraph 454, may be

promoted to the rank of head constable by the Deputy Inspector-General of Police, Headquarters, provided that the total number of Head Constables so promoted shall not exceed 2 ½ percent of the posts of Head Constables, Armed Police, sanctioned for the Police Force."

6. The first para of above Regulation, which is application to the petitioner, clearly shows that the strength of the district is to be considered for the promotion. It is admitted fact that the petitioner was promoted by Superintendent of Police, Muzaffarnagar when he was posted in said district. Naturally "district" mentioned in para 1 of Regulation 455 of U.P. Police Regulations, refers to the district where the petitioner was posted and promoted. In the present case, it can be said that it refers to district Muzaffarnagar. In the order dated 25-6-1990 (Annexure –2) by which the petitioner was promoted, it is specifically mentioned regarding the approval made by the Range Deputy Inspector General of Police, Meerut, vide his letter dated 21.06.1990. The impugned order (Annexure-1) nowhere discloses whether the percent of strength refers to the district of Muzaffarnagar or the district of Chamoli. The said order of reversion was passed by Superintendent of Police, Chamoli whereby petitioner's basic pay has been reduced to Rs. 1090 from Rs. 1100 w.e.f. 06.04.1993. It is settled principle of law that such a reversion order

with reduction in pay cannot be passed by the authority concerned without giving opportunity of being heard, as required under Section 311 (2) of Constitution of India. Even otherwise, since before passing the impugned order of reversion, it appears that the principles of natural justice are not followed, as such, the same being arbitrary is violative of Article 14 of Constitution of India.

7. Learned counsel for the respondents, argued that since the order is not punitive in nature and the promotion order itself was illegal, as such, there was no need to give any opportunity of being heard to the petitioner. True, had the order of promotion Annexure-II been wrong or unlawful, it could have been said that respondents have a right to rectify it. But the order Annexure II appears to be passed in accordance with law as promotion is made under Regulation 455 and the fact that approval was obtained from the Range Deputy Inspector General of Police is also mentioned in it. In para 7 of counter affidavit, strength of Head Constables is mentioned in district Chamoli while the promotion order was passed in district Muzaffanagar.. Had the opportunity been given to the petitioner before the impugned order was passed, he could have been able to show to the authorities concerned that there was approval of Deputy Inspector General of Police and that his promotion was within the 20% strength of the Head Constables of the district Muzaffarnagar. That being so, the impugned order

(Annexure-1) of reversion passed against the petitioner is bad in law for being violative of principles of natural justice for not affording the petitioner opportunity of being heard before such order is passed.

8. Therefore, for the reasons, as discussed above, the writ petition deserves to be allowed. The same is allowed. The impugned order dated 06.04.1993 (Annexure-1) passed by Superintendent of Police, Chamoli, is quashed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 27.07.2006
Sweta